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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,675	02/20/2004	Ok-Kyung Cho	1021.43510X00	5533
20457	7590	11/07/2005		
ANTONELLI, TERRY, STOUT & KRAUS, LLP 1300 NORTH SEVENTEENTH STREET SUITE 1800 ARLINGTON, VA 22209-3873			EXAMINER MALLARI, PATRICIA C	
			ART UNIT	PAPER NUMBER
			3736	

DATE MAILED: 11/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/781,675

Applicant(s)

CHO ET AL.

Examiner

Patricia C. Mallari

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6-9 is/are allowed.
- 6) ☒ Claim(s) 1-4 and 10 is/are rejected.
- 7) ☒ Claim(s) 5 and 11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3/14/05, 3/18/05, 7/4/04
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

This is a non-final Office action. New grounds of rejection have been which were not necessitated by the applicants' amendments to the claims. The allowability of claim 4 has also regretfully been withdrawn.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 4, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 6,269,314 to litawaki et al. in view of US Patent No. 5,924,996 to Cho et al. litawaki teaches a blood sugar level measuring apparatus comprising a measuring portion 1 capable of obtaining a plurality of measurement values (col. 3, lines 29-32 and lines 42-47; col. 3, line 65-col. 4, line 6 of litawaki). A selecting means 3 allows a patient to select whether she or he is an able-bodied person or a diabetic patient (fig. 6; col. 4, lines 7-10 and lines 42-59; col. 5, lines 5-10; col. 7, lines 29-33 of litawaki). A calculation portion 5 calculates a blood sugar level based on the measurement values obtained by the measuring portion 1 and the result of the selection by selecting means 3 (figs. 11 & 14; col. 4, lines 66-col. 5, line 65 of litawaki). The measuring portion of litwaki relies light from a light source passing through a portion of the patient's body to estimate blood sugar values, wherein the measurement

values are related to just the body surface from rather than measurement values related to both the body surface and a measurement environment.

However Cho teaches a measuring portion for measuring blood sugar values based on heat radiating from a user's skin and a temperature of the environment (Col. 6, line 66-col. 7, line 27 of Cho). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to use the measuring portion of Cho for that of litawaki as it is merely the substitution of one known means for obtaining blood sugar values for another.

With regard to the "selecting means for selecting an able-bodied person or a diabetic patient," this limitation meets three-prong test per MPEP 2181 and thereby invokes 35 U.S.C. 112, 6th paragraph. litawaki teaches a selecting means which is described as including a key or button input unit 31 (fig. 1; col. 4, lines 7-10 of litawaki) which is considered to be an equivalent to the applicants' means because it performs the same function in substantially the same way and produces substantially the same result as the corresponding element in the applicants' specification. See MPEP 2183.

Regarding claim 3, the selecting means 3 comprises an input operating portion 31, 32 provided for the able-bodied person or diabetic patient individually (fig. 1; col. 4, lines 7-1 of litawaki).

Regarding claim 4, a storage portion stores a plurality of regression functions, wherein the calculation portion reads a regression function corresponding to the result of the selection from the storage portion to calculate the blood sugar level (col. 5, lines 11-67 of litawaki). While the reference does not explicitly recite the regression function

being stored in a storage portion, it is clear that since the calculation portion 5 uses regression functions to calculate the blood sugar distribution data, those functions must inherently be stored in some storage portion related to the calculation portion so that the calculation portion may use them in order to calculate the blood sugar distribution, as described.

Regarding claim 10, in a method of blood sugar level measuring, the blood sugar level is calculated using the obtained plurality of measurement values and a regression function for either able-bodied persons or diabetic patients chosen based on the obtained type identifying an able-bodied person or a diabetic patient (col. 5, lines 58-67 of litawaki).

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over litawaki in view of Cho, as applied to claims 1, 3, 4, and 10 above, and further in view of US Patent No. 6,322,504 to Kirshner. litawaki, as modified, is silent as to how the patient is notified when to input or prompted to select whether he or she is an able-bodied person or a diabetic patient. However, Kirshner teaches a system in which a computer system comprising a monitor and a keyboard or other input means is used to prompt a person to select whether he or she is a diabetic patient or an able-bodied person (col. 5, lines 1-20; col. 10, lines 32-35 of Kirshner). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to use the selecting means of Kirshner as that of litawaki in view of Cho, since litawaki, as modified, teaches allowing a person to select whether he or she is diabetic, and Kirshner teaches an appropriate such means

Allowable Subject Matter

Claims 6-9 are allowed. The allowability of claims 6-9 was addressed in a previous Office action filed 3/23/05.

Claims 5 and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The allowability of claims 5 and 11 was addressed in a previous Office action filed 3/23/05.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia C. Mallari whose telephone number is (571) 272-4729. The examiner can normally be reached on Monday-Friday 10:00 am-6:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Patricia Mallari
Patent Examiner
Art Unit 3736



ROBERT L. NASSER
PRIMARY EXAMINER